S.B. CIVIL MISC. APPEAL NO. 348/2006

Date : 26.05.2006

HON'BLE MR. BHAGWATI PRASAD, J.

Mr. S.L. Jain for the appellant.
Mr. Vijay Bishnoi for the respondents
Mr. Dron Kaushik]

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Heard.

This appeal is filed against the order of the trial court whereby, the injunction application filed by the appellant has been dismissed. The suit was for specific performance of the contract entered in between the appellants and the respondent no.1.

The case of the appellants is that the respondent no.1 in 1990 had agreed to sell the land to him for a consideration which has almost been paid except Rs. 5,000/- and he is entitled to get the specific performance of contract in his name and since the possession was handed over to him, his rights can be protected under Section 53A of Transfer of Property Act wherein he has already performed his part of performance. The case of the appellant is that the trial court was wrong in saying that there is compensation clause in the agreement and therefore, no case for injunction is made out. Learned counsel for the appellants further argued that the agreement gives them a right to sue for specific performance.

Learned counsel for the respondent no.1 argued that as far as he is concerned, he do not admit that any agreement was ever entered in between

him and the plaintiff. Since the very existence of the agreement is denied, the question whether he was under an obligation to inform the Bank that there was an agreement, becomes redundant.

Learned counsel for the Bank submitted that Section 53A would not come into operation because proviso says that a person without notice is protected by the proviso to Section 53A of the Act because the Bank was under notice and since respondent no.1 clearly stated that he had not entered into an agreement with the appellants, therefore, there was no question of any intimation being given to the Bank by the respondent no.1 that there is any agreement. Thus, the Bank is a person with whom the land has been mortgaged and it is without notice. Thus, to realise mortgage money, the Bank can always sell the land under the provisions of the Co-operative Societies Act.

I have considered the rival submission and have given my thoughtful consideration. The Co-operative Societies Act gives an authority to the Bank under the Act to sell the land which is mortgaged with it which is without notice of any agreement and the person who is alleged to party to the agreement has denied the agreement. Whether the agreement was in fact entered into or not is the question which is to be determined by the trial court. If at all, it is determined that the agreement was there, then the claimant can be compensated by money. Learned counsel for the appellants has relied on a decision in the matter of Kirpal Singh Vs. Mst. Kartaro &Ors reported in WLN 1980 page 411. This case is distinguishable on facts. That being the position,

no case for injunction has been found by the trial court in favour of the appellants and in my opinion, rightly so. There is no force in the appeal. The appeal is hereby dismissed.

(BHAGWATI PRASAD), J.

bjsh